

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Diana Keam	Team: Team # 8	CCRB Case #: 200508693	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 07/27/2005 9:30 PM	Location of Incident: § 87(2)(b)	Precinct: 101	18 Mo. SOL 1/27/2007	EO SOL 1/27/2007	
Date/Time CV Reported Wed, 07/27/2005 10:06 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 07/27/2005 10:06 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Carlos Fabara	01279	922317	101 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Eric Konoski	26428	930497	101 PCT
2. POM John Florio	29396	930165	101 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Carlos Fabara	Abuse: SGT Carlos Fabara authorized the detention of § 87(2)(b)	§ 87(2)(b)
B.SGT Carlos Fabara	Abuse: SGT Carlos Fabara authorized the frisk of § 87(2)(b)	§ 87(2)(b)
C.SGT Carlos Fabara	Abuse: SGT Carlos Fabara forcibly entered and searched § 87(2)(b)	§ 87(2)(b)
D.SGT Carlos Fabara	Abuse: SGT Carlos Fabara refused to provide his name and shield number to § 87(2)(b)	§ 87(2)(b)

### Synopsis

On July 27, 2005, § 87(2)(b) called the CCRB to make the following complaint. § 87(2)(b) stated that at approximately 9:30PM on July 27, 2005, an officer (PO1) instructed another officer (PO2) to handcuff and detain § 87(2)(b)'s eldest son, § 87(2)(b) (Allegation A), and frisk him (Allegation B). PO1 then entered and searched the § 87(2)(b) family's home at § 87(2)(b) (Allegation C). During the incident, a third officer (PO3) came into the house and told PO1 that he was in the wrong house. The officers then left § 87(2)(b) and released § 87(2)(b). Before the officers left the scene, § 87(2)(b) asked PO1 to identify himself and he refused to do so (Allegations D). § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) This case was assigned to the writer after the resignation of Investigator Zakary.

### Summary of Complaint

*On July 27, 2005, officers from the 101 Precinct Anti-Crime Unit were travelling down § 87(2)(b) Avenue in Queens when they were flagged down by an unidentified woman. The woman reported to the officers that there was a large crowd on § 87(2)(b) (a dead end street) and that someone had a gun. The woman did not provide a description of any one person in particular who may have had the weapon. After speaking with the woman, the officers proceeded to § 87(2)(b) and encountered a crowd of 15 to 20 people, as the woman had indicated. The events that took place at § 87(2)(b) are a result of the unidentified woman's report. Following the officers' interaction with the § 87(2)(b) family, the officers arrested two other individuals on § 87(2)(b). One individual was arrested for § 87(2)(b). The other individual was arrested because of a return on a warrant.*

§ 87(2)(b) is a § 87(2)(b) old black male, 5'8", 140 pounds, with black hair and brown eyes. § 87(2)(b) was interviewed at the CCRB on August 15, 2005 (Enc. 12 a-e). § 87(2)(b) is a § 87(2)(b) old black female, 5'7", 140 pounds, with black hair and brown eyes. § 87(2)(b) was interviewed at the CCRB on August 19, 2005 (Enc. 14 a-d). § 87(2)(g)

On July 27, 2005, § 87(2)(b) and § 87(2)(b) were at home with their children § 87(2)(b) and § 87(2)(b) at § 87(2)(b). The § 87(2)(b) stated that § 87(2)(b)'s girlfriend, § 87(2)(b) had visited the house prior to the incident and then called a cab to go home. After leaving the house, § 87(2)(b) realized she had forgotten something in the § 87(2)(b)'s house and § 87(2)(b) came outside to give it to her. § 87(2)(b) then ran back into the house. Shortly afterwards, the police arrived.

§ 87(2)(b) stated that he was upstairs when he heard loud knocking at his front door. § 87(2)(b) headed downstairs and § 87(2)(b) followed behind him. They heard someone on the other side of the door say, "Open the freaking door," so they opened the door and saw a plain-clothed white male officer on the front porch. The officer (PO1) was about 5'8" to 6'0" in his mid 20's, had short hair, and was wearing khaki shorts and a backpack. PO1 said that there was a call that someone was being held against his or her will in their home. § 87(2)(b) told PO1 that that was not the case, but PO1 pulled § 87(2)(b) out on the front porch and handcuffed him. Another officer (PO2) walked up onto the porch from the front gate. PO2 was a white male in plainclothes who looked to be in his mid 20s. PO1 told PO2 to watch § 87(2)(b) and then PO1 pushed past § 87(2)(b) and entered the house. § 87(2)(b) immediately asked PO1 what he was doing and why he was in their house. PO1 responded that someone had called about a burglary. § 87(2)(b) explained that their house had not been burglarized and that they had an alarm. PO1 had no response to § 87(2)(b)'s statement. § 87(2)(b) then asked PO1 for his name and asked him if he had a warrant. Again, PO1 did not respond.

§ 87(2)(b) came downstairs as PO1 was looking around the living and dining room. § 87(2)(b) told PO1 that if he didn't have a warrant he needed to leave, but he did not comply. PO1 then changed his story and stated that there was a burglary at the residence. § 87(2)(b) pointed to an alarm system for the house and told PO1 that if there had been a burglary the alarm would go off and the fire department would be there. PO1 told the § 87(2)(b) that he still had to see who was in the house. § 87(2)(b) told PO1 that their other son § 87(2)(b) was upstairs. PO1 then went upstairs and § 87(2)(b) and § 87(2)(b) followed. PO1 pushed

open the door to § 87(2)(b)'s room, and asked him if anyone else was with him. PO1 spoke to § 87(2)(b) for a few seconds, but § 87(2)(b) did not hear exactly what PO1 said. § 87(2)(b) stated that PO1 had something in his hand, but she could not tell if it was a gun. At that time, another officer (PO3) came half way up the stairs and called to PO1. PO3 was a white male, 25 years old, 200 pounds, and wearing a black T-shirt and khaki shorts. PO1 went half way down the stairs, and PO3 told PO1 that they were in the wrong house. PO1 and PO2 started downstairs to exit the residence, and § 87(2)(b) asked for an explanation and told them they could not just walk out of her house. § 87(2)(b) and § 87(2)(b) asked PO1 for his name and badge number again. PO1 had a shield around his neck that he quickly flipped over for them to see, but he did not verbalize his name and § 87(2)(b) could not read the shield number. § 87(2)(b) and § 87(2)(b) followed the officers outside the house and saw § 87(2)(b) standing outside the front gate in handcuffs. There were approximately 15 young black males standing outside on the street.

PO1 and PO3 went across the street and knocked on § 87(2)(b). The officers were there for approximately 15 minutes but they did not go into § 87(2)(b). PO1 and PO3 then came back to the gate in front of § 87(2)(b) and PO1 told PO2 to take the handcuffs off of § 87(2)(b). § 87(2)(b) and § 87(2)(b) were on the front porch. PO2 took the handcuffs off of § 87(2)(b) but the officers did not explain why. All three officers walked away from § 87(2)(b) towards their unmarked dark green or black four-door sedan that was parked in front of 9 § 87(2)(b). § 87(2)(b) left the front porch and followed the officers to ask them for their name and badge numbers. § 87(2)(b) stated that she specifically asked PO1 for his name and badge number. The bystanders on the block had followed and were watching what was happening. PO1 did not want to provide his information to § 87(2)(b) in front of everyone. Instead, he wanted her to come over behind the officers' car, which was parked in a dark spot. § 87(2)(b) felt PO1 could give her his information in front of everyone and did not want to go into the dark, but PO1 told her he had nothing to say to her. § 87(2)(b) then wrote down the license plate instead, but had her glasses on and was not sure if she recorded the correct number. § 87(2)(b) stated that the plate number was either § 87(2)(e) or § 87(2)(e).

While § 87(2)(b) followed after the officers, § 87(2)(b) went into the house and called 911, and was given the number to the 101<sup>st</sup> Precinct. § 87(2)(b) explained to someone at the 101<sup>st</sup> Precinct that officers had entered his home without his permission, and they stated that someone would come out to his house. Officers never responded to the § 87(2)(b) residence. After leaving the officers, § 87(2)(b) went back into the house and called 311, who either connected § 87(2)(b) to the CCRB or gave her the number. A few days later, § 87(2)(b) spoke to a community board member, Jonathan Gaston, who called the 101<sup>st</sup> Precinct and spoke to an officer who said that someone would call the § 87(2)(b) to apologize for what had happened. § 87(2)(b) never received a phone call. Several days later, § 87(2)(b) went to the 101<sup>st</sup> Precinct and was told that the officers who came to his home were on vacation and that they were nice guys. An officer at the precinct gave § 87(2)(b) a form for the CCRB, as well as the telephone number. § 87(2)(b) was unaware that his wife had filed a complaint with the CCRB on the date of incident. The officers stopped § 87(2)(b)'s cab and it remained parked in front of the house for the duration of the incident. PO1 was identified by the CCRB as SGT Carlos Fabara, PO2 was identified as PO John Florio, and PO3 was identified as PO Eric Konoski.

During a photo array at the § 87(2)(b)'s home on April 26, 2006 (Encs. 13 a-o), § 87(2)(b) and § 87(2)(b) were shown a series of 12 officer photographs. The series contained photographs of the three officers known to the CCRB to have been present during the incident and nine filler photographs. After viewing all 12 photos, § 87(2)(b) was unable to identify any of the officers and § 87(2)(b) identified two officers. § 87(2)(b) stated that the officer in photograph number 1 resembled the officer who forced himself into her home. § 87(2)(b) stated that the officer in photograph number 2 resembled the officer who ran up her stairs and said the officers were in the wrong house. The officer in photo 1 is SGT Carlos Fabara. The officer in photo 2 is DT Gerald Breiner.

§ 87(2)(b)

§ 87(2)(b) is a § 87(2)(b) old black male, 5'11", 145 pounds, with black hair and brown eyes. He is the elder son of § 87(2)(b) and § 87(2)(b). § 87(2)(b) was interviewed at the CCRB on August 15, 2005 (Enc. 16 a-e) and was also shown a series of officer photos at his home on April 26, 2006 (Enc. 17 a-o).

On July 27, 2005 at approximately 9:30pm, § 87(2)(b) was looking out of his bedroom window on the § 87(2)(b) floor of § 87(2)(b). § 87(2)(b) was watching a group of guys who had congregated in front of his residence. One of those people was a Jamaican man named § 87(2)(b). § 87(2)(b) is not acquainted with § 87(2)(b) but knows who he is. § 87(2)(b) had previously robbed one of the guys in the group and sold his belongings to § 87(2)(b)'s next door neighbor. The guys told § 87(2)(b) they would beat him up if they didn't get their things back immediately. § 87(2)(b)'s next-door neighbor at § 87(2)(b) was not home, so § 87(2)(b) broke in the front door and went into the residence. He came back outside with what appeared to be speakers and put them in a car.

After § 87(2)(b) broke into § 87(2)(b)'s little brother, § 87(2)(b)'s girlfriend walked his girlfriend outside and put her in a cab. § 87(2)(b) was wearing pants and a white dew rag, but did not have a shirt on. After his girlfriend was in the cab, § 87(2)(b) ran back into the house. Simultaneously, two officers came running towards the house. One officer, PO1, opened the driveway gate, went into the back yard and looked around with a flashlight. The second officer, PO2, looked around in the front yard area with a flashlight. The officer in the front stopped the cab that § 87(2)(b)'s girlfriend was in. § 87(2)(b) then ran downstairs and out the front door onto the front porch. He asked the officers what the problem was. One of the officers (PO1) asked § 87(2)(b) why had he run back into the house. § 87(2)(b) told him that he hadn't, and that he lived there. § 87(2)(b) was wearing pants and no shirt, but his hair was not tied back and was extended out. PO1 was a white male, wearing blue shorts and a black hat on backwards. He also carried a small black book bag. PO1 and PO2 came up onto the front porch and kept asking § 87(2)(b) why he ran back into the house. § 87(2)(b) told the officers he didn't run into the house, that he lived there and could get identification to prove it. PO1 told § 87(2)(b) to "shut up" and put his hands behind his back. PO1 handcuffed § 87(2)(b) and told him he was not going anywhere. PO1 felt § 87(2)(b)'s pockets to make sure he did not have anything on him. § 87(2)(b) told PO1 and PO2 they couldn't go into his house without a warrant. At that point, § 87(2)(b)'s father, § 87(2)(b) had come to the front door and § 87(2)(b) gave him his phone. PO1 told PO2 to keep an eye on § 87(2)(b) and PO2 directed § 87(2)(b) away from the house and outside the front gate. PO1 ran into the house while § 87(2)(b) and § 87(2)(b) asked him what was going on. § 87(2)(b) tried to find out from PO2 what was happening, but PO2 did not tell him. § 87(2)(b) did not know the reason the officers were there, and did not tell them anything about what had transpired with § 87(2)(b). At that point, § 87(2)(b) was standing outside of § 87(2)(b) along with a group of people. § 87(2)(b) was still in the cab in front of the residence. The cab driver, a black male, spoke to PO2.

After some time, PO1 came out of § 87(2)(b). § 87(2)(b) then noticed a third short and stocky white male officer in plain clothes (PO3). § 87(2)(b) was not sure when PO3 arrived on scene. § 87(2)(b) saw PO1 and PO3 go across the street to § 87(2)(b) and then come back to § 87(2)(b). When they returned, PO1 and PO3 whispered something to PO2, and PO2 took the handcuffs off of § 87(2)(b). § 87(2)(b) had been detained and handcuffed for approximately 30 minutes to an hour. The officers did not explain anything to § 87(2)(b) about why he had been detained and was being released. § 87(2)(b) and § 87(2)(b) were standing on the front porch yelling at PO1. § 87(2)(b) came down from the porch and went after the officers to get their name and badge numbers. PO1, however, put his shield inside his shirt and did not want to give § 87(2)(b) his information with other people standing around. All three officers eventually got into the car and left. § 87(2)(b) wrote down the license plate of the car. After the incident, when § 87(2)(b) told his son that the officers had mentioned a burglary, § 87(2)(b) connected § 87(2)(b) stealing the speakers to the officers arriving on scene.

During a photo array at his home on April 26, 2006, § 87(2)(b) was unable to identify any of the officers.

§ 87(2)(b)

§ 87(2)(b) is a § 87(2)(b) old black male, 6'3", 195 pounds, with black hair and brown eyes. He is the younger son of § 87(2)(b) and § 87(2)(b). § 87(2)(b) was interviewed at the CCRB on August 15, 2005 (Enc. 18 a-d).

On July 27, 2005 at approximately 9:30pm, § 87(2)(b) was at his home at § 87(2)(b). § 87(2)(b) was wearing cream pants, no shirt, and a white dew-rag on his head. § 87(2)(b) walked

his girlfriend, § 87(2)(b) outside, put her into a cab, and helped her with a large garbage bag full of clothes that his mother had given her. After putting § 87(2)(b) into a cab, § 87(2)(b) ran back into the house and went to his room on the § 87(2)(b) floor. Some time later, § 87(2)(b) was playing video games when he heard yelling and arguing, but assumed that it was his parents. As § 87(2)(b) got up to find out what was going on, a white male officer in plain clothes opened his door and pushed him aside. The officer, PO1, had his gun drawn and was holding it at his side. PO1 asked § 87(2)(b) if he had any weapons or drugs on him as he stood at the door and looked around the bedroom. PO1 was 5'11" to 6'0", between 25 and 30 years old, and was wearing a black hat and a black book bag, possibly a 50-cent shirt, shorts, and had a gold badge hanging out around his neck. PO1 did not tell § 87(2)(b) why he was there. § 87(2)(b) was standing at the bottom of the steps screaming, "Why are you in my house?" § 87(2)(b) was standing outside the bedroom door asking PO1 what he was doing. PO1 was at § 87(2)(b)'s bedroom door for approximately 5 minutes.

Another white male plain clothed officer, PO2, came upstairs and spoke to PO1. PO2 was husky and had a beer belly, and looked to be 40-years old. § 87(2)(b) could not hear what the officers were saying, but it seemed like they realized they were in the wrong house and then went downstairs. § 87(2)(b) was yelling at the officers telling them that they were violating her rights. § 87(2)(b) and § 87(2)(b) went outside onto the front porch. § 87(2)(b) noticed that the cab with § 87(2)(b) in it was still out front. § 87(2)(b)'s brother, § 87(2)(b) was standing outside the front gate handcuffed and was being watched by another officer (PO3). One of the guys across the street yelled that the reason the officers were there was because someone had robbed his car. § 87(2)(b) stated that PO1 and PO2 arrested one of the tall black males across the street in connection with some speakers. After the individual was arrested and placed into the officers' vehicle, PO3 removed the handcuffs from § 87(2)(b). The officers then started to leave and as they did so, § 87(2)(b) followed them and asked for their names. None of the officers responded. PO1's shield was hanging around his neck and he tucked it into his shirt. § 87(2)(b) did not hear any officers use profanity during the incident.

During a photo array at his home on April 26, 2006 (Enc. 17 a-o), § 87(2)(b) stated that the officer in photograph number 6 looked like the officer who came into his room (PO1). § 87(2)(b) stated, however, that PO1 was more of a cross between the officer in photo 1 and the officer in photo 6. § 87(2)(b) also stated that the officer in photo 8 looked similar to the officer who told PO1 they were in the wrong house. The officer in photo 9 also resembled PO1, but PO1's forehead was not that big. The officer in photo 6 is PO Christopher Cooke. The officer in photo 8 is DT Andrew Duguid. The officer in photo 9 is PO Christopher Connell. The officer in photo 1 (one of the officers whom § 87(2)(b) said PO1 was a cross between) is SGT Carlos Fabara.

### **Attempts to contact other victims**

The members of the § 87(2)(b) family stated that § 87(2)(b) a friend of § 87(2)(b)'s, was detained in a cab outside of the house for the duration of the incident. At the request of § 87(2)(b) the family did not provide any of her contact information. § 87(2)(b) stated that § 87(2)(b) said she did not wish to be involved in the complaint. As such, it was not possible to obtain her statement.

## **Results of Investigation**

### **Officer Statements**

#### *Sgt. Fabara*

SGT Fabara is a § 87(2)(b)-old Hispanic male with black hair and brown eyes. He is 5'10" tall and 185 lbs. Sgt. Carlos Fabara gave the following statement at the CCRB on March 14, 2006 (Enc. 21 a-b):

Sgt. Fabara did not bring his memo book to the interview. As a result, he was uncertain as to some of the details regarding this incident. Sgt. Fabara stated that he believed that on July 27, 2005 he worked a 17:26 by 02:10 tour as the Anti-Crime Supervisor. After looking at the roll call for the date of incident, Sgt. Fabara stated that his partners were PO Florio and PO Konoski. Sgt. Fabara was dressed in plainclothes and was assigned to an unmarked RMP. Following Sgt. Fabara's interview, the CCRB received a copy of his memo book entry (Enc. 20 a-b) regarding the incident. The entry reads: 21:35 2 under § 87(2)(b)

Sgt. Fabara stated that he and the other officers were flagged down by a female and told that on § 87(2)(b) (which is a dead-end street) there was some type of dispute and that someone had a gun. The officers then proceeded onto § 87(2)(b) where they encountered a large crowd (Sgt. Fabara was unable to estimate how large the crowd was). Sgt. Fabara stated that the people in the crowd recognized that he and his partners were officers and began acting suspiciously. Sgt. Fabara specifically stated that some of the group began to scatter, others were whispering to each other, and many of them appeared to be nervous. Sgt. Fabara stated that one man in particular happened to be standing in front of § 87(2)(b) and he appeared particularly nervous. When asked what about this man made him appear more suspicious than the others, Sgt. Fabara stated that he appeared to be nervous, was watching the officers intently, and he made furtive movements. Sgt. Fabara was unable to elaborate any further on the types of furtive movements that this male was making, but he assumed that the male was reaching toward his waist. Sgt. Fabara stated that the male was behaving more suspiciously than the other people in the crowd were. Sgt. Fabara stated that he ordered the male to “stop” and the male took off running into § 87(2)(b). Sgt. Fabara then ordered one of the officers (he was unsure which one) to go around the back of the house. Sgt. Fabara stated that he went to the front door and knocked. An older man answered the door. Sgt. Fabara stated that he identified himself and told the man who answered the door that he suspected that a man with a gun had entered the house. Sgt. Fabara stated that the man was very cooperative and told him he could come in. Sgt. Fabara was not able to recall whether he went in the house by himself or with other officers. Sgt. Fabara then stated that the man walked him through the house. As Sgt. Fabara and the man were walking through the house, a woman (Sgt. Fabara presumed that she was the older man’s wife) approached and began screaming and yelling. Sgt. Fabara stated that the woman appeared very upset and that he inferred that she wanted him to leave her home. Sgt. Fabara stated that he then left the house. Sgt. Fabara estimated that he was inside the house for less than five minutes.

When Sgt. Fabara was asked if he encountered any other civilians inside § 87(2)(b) he stated that he believed there was another male in the house, but that he had not had contact with him. Sgt. Fabara stated that after he left the house he and the other officers encountered the male again. The investigator then asked Sgt. Fabara if the male was just standing outside of the house when the officers exited. Sgt. Fabara stated that he was not sure if he had encountered the male inside the house and then escorted him outside or if the male was already standing outside when the officer exited. Sgt. Fabara stated that he suspected that the male had a firearm. As a result, Sgt. Fabara stated that the male was stopped, handcuffed, frisked, and questioned. Sgt. Fabara estimated that the male was detained for about ten minutes. Sgt. Fabara stated that he did not recall having any conversation with any of the other residents of § 87(2)(b) after he left the house. Sgt. Fabara also did not recall seeing a cab in the vicinity of § 87(2)(b) or speaking to a young female.

When asked if a 250 was prepared, Sgt. Fabara stated that he believed so. The investigator then explained to Sgt. Fabara that the 250 log had already been received and there was no record of the male on it. Inv. Keam then asked Sgt. Fabara if he believed that one had, in fact, been filled out. Sgt. Fabara again said he believed so, but also stated that sometimes entries into the log and the 250 reports themselves are recorded on a delay because his unit is upstairs in the precinct.

Sgt. Fabara stated that he did not use any profanity when speaking to any of the civilians. He also stated that he did not refuse to provide his name or shield number. Sgt. Fabara stated that his gun might have been drawn at some point, but that he did not point it at any of the civilians.

#### *PO Florio*

PO Florio is a § 87(2)(b)-old white male with brown hair and blue eyes. He is 5’10” tall and weighs 190 lbs. On January 31, 2006 PO John Florio gave the following statement at the CCRB (Enc. 23 a-b):

PO Florio stated that on July 27, 2005 he worked a 17:00 by 02:05 on an Anti-Crime assignment. PO Florio was dressed in plainclothes, in an unmarked car (unknown number), and was working with Sergeant Fabara and PO Konoski. PO Florio’s memo book entry regarding the incident (Enc. 22 a-b) states: 21:35 2 under from § 87(2)(b) for PO Konoski.

PO Florio stated that he and the other officers were driving down § 87(2)(b) and a woman walking from § 87(2)(b) approached them. PO Florio described § 87(2)(b) as a very narrow and dark, dead-end residential street. The woman told the officers that there was a large, disorderly group on § 87(2)(b) and that she believed she saw a gun. PO Florio did not recall if the woman provided a description of the person with the gun. The officers then proceeded to slowly drive down § 87(2)(b) where they observed a group of 15 to 20 people who appeared to be arguing. Upon seeing the officers, the group dispersed. The officers then attempted to detain as many people from the group as possible. The officers saw one individual, described as a short, skinny, male Hispanic wearing blue jeans, run into § 87(2)(b). PO Florio stated that the officers tried to secure the perimeter of § 87(2)(b) and then they proceeded to the front door. PO Florio stated that he himself remained in the street (about 15-20 feet from the front door of the house) and that one of the other officers approached the front door and rang the doorbell. The parents of the male Hispanic came to the door in their pajamas and let the officer inside their house. PO Florio was not able to recall which officer went inside the house or what, if anything, that officer may have said to the parents of the male Hispanic. PO Florio was also unsure what the third officer in his group was doing in the mean time. After a very short period of time, the officer exited the house with the male Hispanic. The male was then handcuffed and detained for approximately 5 minutes. During that time period, a man from the crowd approached the officers and stated that someone had robbed him. The man then pointed to another man in the crowd and the officers arrested that man. PO Florio stated that the officers questioned the male Hispanic about the robbery and then let him go. PO Florio stated that a 250 was prepared. The investigator showed PO Florio a picture of a man (known to the CCRB as § 87(2)(b)) and asked him if he recognized the man. PO Florio said, "I want to say that that looks like the guy we pulled out of the house, but I'm not 100%. So 'No' I don't recognize him." When the allegations were addressed, PO Florio stated that he did not enter or search § 87(2)(b) he did not refuse to provide his name or shield number, and he did not recall using profanity or drawing his weapon.

#### *PO Konoski*

PO Konoski is a § 87(2)(b)-old white male with brown hair and blue eyes. He is 5'6" tall and 180lbs. PO Eric Konoski gave the following statement at the CCRB on March 1, 2006 (Enc. 25 a-b):

PO Konoski stated that on July 27, 2005 he worked Anti-Crime on a 17:30 by 02:35 tour. He stated that he was dressed in plainclothes, assigned to unmarked RMP 532, and working with PO Florio and Sgt. Fabara. PO Konoski's memo book entry (Enc. 24 a-b) read, "21:35 2 under § 87(2)(b)

PO Konoski confirmed PO Florio's account that a woman approached the officers and the woman reported a gun and a large crowd on § 87(2)(b). PO Konoski stated that the woman did not provide a description of a person with a gun, but just said she thought there was one. The officers then proceeded to drive down § 87(2)(b) where they observed a large crowd. As the officers drew nearer, a skinny male black approximately 5' 9" wearing no shirt ran from the crowd and into a residence (§ 87(2)(b)). PO Konoski stated that the officers then exited their vehicle and did their best to secure the perimeter of the house. PO Konoski stated that he went to the side of the house. The officers knocked on the door of § 87(2)(b) and a woman answered. The officers explained to the woman that they had just seen a man run into their house and wanted to make sure that no one was being held hostage against their will and that no one was in danger. PO Konoski stated that the woman agreed to let the officers into the house. When the officers entered the house, they went directly upstairs and immediately found the male black in question (known to the CCRB as § 87(2)(b)). PO Konoski stated that § 87(2)(b) agreed to leave the house with the officers. While the officers were upstairs, the woman who answered the door (known to the CCRB as § 87(2)(b)) also came upstairs and suddenly told the officers they had to leave. PO Konoski stated that the officers left immediately and that § 87(2)(b) came with them. Once outside, the officers began questioning § 87(2)(b). PO Konoski stated that § 87(2)(b) appeared very nervous. § 87(2)(b) was sweating a great deal and his heart was beating very fast. PO Konoski mentioned that he felt § 87(2)(b)'s chest and that was how he knew that his heart was beating fast. Because § 87(2)(b) appeared very nervous, and because the officers suspected he might have a weapon, § 87(2)(b) was handcuffed. As the officers were questioning § 87(2)(b), § 87(2)(b) approached the officers and spoke with Sgt. Fabara. PO Konoski stated that § 87(2)(b) appeared irate and seemed concerned that § 87(2)(b) was going to be arrested. PO Konoski stated that Sgt. Fabara did his best to calm her down and to explain the situation. After questioning § 87(2)(b) the officers decided to release him. PO Konoski stated that he believed a

250 was filled out for a “refused individual”. PO Konoski did not recall a taxi in the area. PO Konoski stated that neither he nor the officers drew or pointed their weapons and stated that none of the individuals asked him to provide his name and shield number.

### **Communications Records**

§ 87(2)(b) called 911 on the date of incident. The following is a transcription of SPRINT § 87(2)(b) (Enc. 26 a-c), which details that call:

Sprint #§ 87(2)(b) July 27, 2005

§ 87(2)(b)

(§ 87(2)(b))

9:30pm: Male caller states three males took [his] son in handcuffs, left with him in a car, with NY plates.

§ 87(2)(e) Call back § 87(2)(b).

9:32pm: Male caller states they displayed a badge and stated they were police officers. Ani-Ali § 87(2)(b)

§ 87(2)(b)

9:34pm: 101 Sgt. 4, received radio communication.

9:34pm: CPU Sgt. states crime has under at location.

9:34pm: 101 anti-crime received radio communication.

9:35pm: 101 anti-crime verification of arrest, 1 under.

9:51pm: 2 under at location.

10:00pm: 101 Sgt.4 resuming patrol.

11:32pm: 101 anti-crime, 10-92C, crime arrest.

### **Police Documents**

*Stop and Frisk Log (Encs. 27 a-b, 28a-b)*

In their CCRB statements, all three officers stated that they believed a 250 was prepared for either § 87(2)(b) or a refused individual in the vicinity of § 87(2)(b). In order to account for any possible delayed entries in the 250 log, the CCRB made three separate requests for a 250 and for the 250 log documenting the stop of § 87(2)(b). The requests were made on August 9, 2005, September 8, 2005 and March 2, 2006, but none of those requests returned positive results.

*Fleet Services Request (Enc. 29)*

On the date of incident, § 87(2)(b) recorded the license plate number of the unmarked RMP that the officers were driving (§ 87(2)(e)). The CCRB then prepared a fleet services request which revealed that that vehicle (RMP 8202) was assigned to the 101<sup>st</sup> Precinct.

*Roll Call (Enc. 30 a-f)*

The Tour 3 roll call for the 101<sup>st</sup> Precinct confirms that SGT Fabara, PO Florio, and PO Konoski were all working and all assigned to Anti-Crime on July 27, 2005.

*Command Log (Enc. 31 a-e)*

The command log for the date of incident lists two arrests by PO Konoski at § 87(2)(b). The first arrest was for § 87(2)(b). The second individual was arrested because of a return on a warrant. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Civil Lawsuit**

During a field visit to his home on April 27, 2006, § 87(2)(b) informed the CCRB that his family had retained an attorney as a result of this incident. § 87(2)(b) indicated that an attorney named § 87(2)(b) was representing him. On May 10, 2006, the CCRB spoke with Bruce Gomez of the New York City Law Department who stated that the § 87(2) family had not filed a notice of claim. On May 31, 2006, the CCRB spoke with § 87(2)(b), who confirmed that his office was representing the § 87(2) family, but that a notice of claim had not yet been filed.

### **Criminal History of Civilians**

According to the BADS database, neither § 87(2)(b) nor § 87(2)(b) nor § 87(2)(b) nor § 87(2)(b) have a criminal history within the City of New York for the last ten years.



## Officers' History

Neither SGT Fabara nor PO Konoski has any substantiated CCRB allegations (Encs. 3 a-b, 5). PO Florio has two substantiated allegations from case 200504637 (Enc. 4). The Board recommended charges for two allegations. The Police Department's Disposition of 200504637 has yet to be determined.

## Conclusions and Recommendations

### Officer Identification

The § 87(2) family provided physical descriptions of the three officers who were present at their home on July 27, 2005. In a photo array, § 87(2)(b) identified SGT Fabara as the officer who entered her home (Enc. 15d). Those physical descriptions that the family provided matched the pedigree information provided by SGT Fabara, PO Florio, and PO Konoski. According to the fleet services database (Enc. 29), the license plate that § 87(2)(b) provided corresponds with RMP 8202. The 101 Precinct roll call (Enc. 30 a-f) has RMP 8202 assigned to PO Florio and PO Konoski. Additionally, all three officers recalled the incident and acknowledged the fact that they were present on the date of incident.

The § 87(2) family stated that after § 87(2)(b) opened the door, SGT Fabara pulled § 87(2)(b) out of the house and instructed an officer to handcuff and detain him. § 87(2)(g)

By both SGT Fabara's and § 87(2)(b)'s account, SGT Fabara was also the officer who made the initial entry into § 87(2)(b). Additionally, § 87(2)(b) stated that she followed after all three officers after they released § 87(2)(b) but she only asked SGT Fabara to identify himself. § 87(2)(g)

### Undisputed Facts

On July 27, 2005, officers entered and searched § 87(2)(b). Officers then detained § 87(2)(b).

### Disputed Facts

The § 87(2) family stated that officers were not given permission to enter their home. They also stated that officers refused to provide their names and shield numbers. § 87(2)(b) stated that he was detained for 30 minutes to an hour and the officers stated that it was only five or ten minutes.

### Credibility

#### § 87(2) Family

§ 87(2)(g)

#### Officers

§ 87(2)(g)

PO Florio stated that officers entered § 87(2)(b) and immediately came out with § 87(2)(b). PO Konoski stated that officers entered § 87(2)(b) found § 87(2)(b) on the § 87(2)(b) floor, and that § 87(2)(b) walked out of the house with the officers and was not handcuffed until several minutes later. SGT Fabara stated that § 87(2)(b) was just waiting outside of the house when the officers exited. Additionally, each of the officers stated that a 250 was prepared for either § 87(2)(b) or for a refused individual, but the 250 log has no record of the stop. § 87(2)(g)

SGT Fabara stated that an older male gave them permission to enter. PO Konoski stated that it was a woman.

### Determination of Fact

The investigation determined that the male whom officers saw run into § 87(2)(b) was § 87(2)(b). § 87(2)(b) had just run outside to give § 87(2)(b) a bag of clothes before the officers arrived. After observing § 87(2)(b) run into his home, officers knocked on the door of § 87(2)(b). When § 87(2)(b) and § 87(2)(b) answered the door, SGT Carlos Fabara pulled § 87(2)(b) out of the house and authorized that he be detained and frisked. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

### Allegation A: SGT Carlos Fabara authorized the detention of § 87(2)(b)

The officers in this case articulated that their pursuit of § 87(2)(b) was based on three factors. The first, that a woman reported a crowd and a gun on § 87(2)(b). The second, that § 87(2)(b) appeared more nervous than the other people in the crowd, and the third that § 87(2)(b) ran into his house. § 87(2)(g)

§ 87(2)(g)

New York State Search and Seizure holds that “an anonymous tip furnishing a general description such as “man with a gun” ... without more, will not constitute reasonable suspicion to forcibly stop an individual...Because of its inherent lack of reliability, such information can only justify a common-law right to inquire.” (Enc. 1b) § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

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§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

### Allegation B: SGT Carlos Fabara authorized the frisk of § 87(2)(b)

§ 87(2)(b) stated that after he was pulled out of his home and handcuffed, officers frisked him. SGT Fabara corroborated that account and justified it by saying that § 87(2)(b) appeared very nervous and officers suspected that he had a weapon. § 87(2)(g)

§ 87(2)(g)

Additionally, in *People v Powell* the court maintained that “nervous behavior” is an insufficient predicate for a frisk (Enc. 1f). § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

### Allegation C: SGT Carlos Fabara forcibly entered and searched § 87(2)(b)

SGT Fabara stated that he and the other officers were flagged down by a female who reported to them that there was a dispute on § 87(2)(b) and that someone had a gun. When the officers arrived at § 87(2)(b) they observed a “large crowd” of people “acting suspiciously”. SGT Fabara particularly noted that one man was behaving more suspiciously than the others in that he appeared to be nervous, he was intently watching the officers, and might have reached toward his waistband. SGT Fabara was unable

to provide the CCRB with a physical description of the man. Based on those observations, SGT Fabara ordered the male to “stop”. When the male took off running into § 87(2)(b) SGT Fabara knocked on the door and explained to the man that answered (known to the CCRB as § 87(2)(b) that he suspected a man with a gun had entered his house. SGT Fabara stated that § 87(2)(b) was cooperative and allowed SGT Fabara to enter his home. SGT Fabara then walked through the house with § 87(2)(b) After SGT Fabara had been in the house about five minutes, § 87(2)(b) asked him to leave and he did so.

§ 87(2)(b) stated that when he heard a knocking at his door, he and his son § 87(2)(b) opened it. An officer told § 87(2)(b) that he thought someone was being held against their will in his § 87(2)(b) s) home. After § 87(2)(b) told SGT Fabara that that was not the case, SGT Fabara pulled § 87(2)(b) out of the house and onto the porch and handcuffed him. SGT Fabara then pushed past § 87(2)(b) and entered the house. After speaking briefly with § 87(2)(b) and § 87(2)(b) SGT Fabara went up the stairs to the second floor of the § 87(2)(b) s home and entered § 87(2)(b) s room with his gun drawn (but not pointed). § 87(2)(b) stated that he never gave SGT Fabara permission to enter his home.

Barry Kamin’s New York State Search and Seizure (Enc. i) maintains that “one of the major exceptions to the warrant requirement is a voluntary consent to a search. If valid consent is obtained, there is no requirement for probable cause for a search.” § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Under the exception of hot pursuit, “a suspect may not thwart an otherwise proper arrest, set in motion in a public place, by escaping into his residence (Enc. j)”. § 87(2)(g)

*PD vs. Dowds and Rose* (Enc. 2 a-c) states, “ An officer is charged to know the law governing searches and seizures, at least to the extent that the law is clear enough to be free from fair dispute about applicability and meaning. Failure to act in accordance with clear law will generally be presumed to involve fault”. § 87(2)(g)

§ 87(2)(g)

**Allegation D: SGT Carlos Fabara refused to provide his name and shield to § 87(2)(b)**

§ 87(2)(b) stated that she asked SGT Fabara to identify himself several times and he refused to do so. SGT Fabara told § 87(2)(b) that he did not want to give her his information in front of everyone and tried to get her to come behind his RMP. § 87(2)(g)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: